



MITCHELL E. DANIELS, JR., *Governor*

JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse11080509
[REDACTED]

[REDACTED],
Complainant,

v.

U.S. SECURITY ASSOCIATES, INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b)

On July 5, 2011, [REDACTED] ("Complainant") filed a complaint with the Commission against U.S. Security Associates, Inc., ("Respondent") alleging sex discrimination in violation of [REDACTED] the Indiana Civil Rights Law (IC 22-9, et seq.). Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was discharged based on his sex. In order to prevail on such a claim, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting his employer's expectations; and (4) female employees were treated more favorably under similar circumstances.

Complainant clearly is a member of a protected category on account of his sex, and there is no question that he suffered an adverse employment action when Respondent laid him off on July 5, 2011. Respondent does not assert that Complainant was failing to meet its performance expectations. In fact, Respondent later rehired Complainant at a different location. Nonetheless, Respondent laid Complainant off as a necessary reduction in force. However, the evidence does suggest that Respondent treated a similarly-situated female employee more favorably. Respondent retained a female employee with less seniority than Complainant. While it is evident that Respondent is in no way obligated to retain the more senior employees during a lay off, Respondent has provided no information to suggest that it retained the female employee rather than Complainant as a result of her superior qualifications for the job. The reasons Respondent advances for selecting the female employee over Complainant appear to be pretext for unlawful



discrimination. There is probable cause to believe that Respondent has violated the Indiana Civil Rights Law as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

February 20, 2012
Date

Joshua S. Brewster, Esq.,
Deputy Director
Indiana Civil Rights Commission